

WEST VIRGINIA SECURITIES COMMISSION

STATEMENT OF POLICY

Impoundment of Proceeds

November 13, 2008

This Statement of Policy is adopted by the West Virginia Securities Commission pursuant to the authority of the Commissioner of Securities of the State of West Virginia granted under Chapter 32 of the West Virginia Code. The West Virginia Securities Commission has determined that this Statement of Policy relating to impoundment of proceeds is consistent with public investor protection and is in the public interest. The Commissioner may waive any requirement of this Statement of Policy for good cause shown.

- A. **Application.** This Statement of Policy applies to all applications to register by coordination or by qualification.
- B. **Denial of Registration.** If an underwriter has not firmly underwritten the offering, the Commissioner may deny the registration unless the issuer has impounded the proceeds.
- C. **Impoundment.** When an Impoundment Agreement (Agreement) is necessary, the proceeds from the sale of the securities must be deposited in an interest bearing escrow or trust account with an impoundment agent. The impoundment agent may not be affiliated with the issuer, its officers or directors, the underwriter, any promoter, or any affiliate of the aforementioned.
- D. **The Agreement.**
 - 1. A signed copy of the Agreement must be filed with the Commissioner and shall become part of the registration statement.
 - 2. The Agreement must be signed by an officer of the issuer, an officer of the underwriter (if applicable), and an officer

of the impoundment agent; the aforesaid individuals must have the authority to sign such documents.

3. The Agreement shall provide that the impounded proceeds (proceeds) are not subject to claims by creditors of the issuer, its affiliates or associates, or its underwriters until the proceeds have been released to the issuer pursuant to the terms of the Agreement.
4. A summary of the principal terms shall be included in the registration statement.
5. The Agreement shall provide that the Commissioner has the right to inspect and make copies of the records of the impoundment agent at any reasonable time wherever the records are located.

E. Release of Impounded Funds.

1. The impoundment agent shall notify the Commissioner in writing upon the release of the proceeds. If the proceeds are insufficient to meet the minimum requirements within the time prescribed by the Agreement, the impoundment agent must release and return the proceeds directly to the investors; and the proceeds shall be released and returned to the investors without deduction for expenses, including impoundment agent fees. All interest earned shall be submitted pro rata to the investors, along with the proceeds.
2. If a person, who is an underwriter or an officer, director, promoter, affiliate, or an associate of the issuer, purchases securities, that are a part of the public offering being sold pursuant to the registration statement, and if the proceeds from that purchase are used for the purpose of completing the impoundment requirements imposed under this Statement of Policy, the following conditions shall be met: The persons are purchasing the securities on the same terms as unaffiliated public investors and the prospectus contains a disclosure that such persons may purchase securities of the issuer for purposes of completing the impoundment requirements imposed by this Statement of Policy.

Glen B. Gainer, III
State Auditor
Commissioner of Securities

By: Lisa A. Hopkins
General Counsel
Senior Deputy Commissioner of Securities

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